



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 28, 1996

Ms. Laura S. Portwood  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-0453

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32313.

The City of Houston (the "city") received a request for pager numbers, mobile phone numbers, city hall telephone extension numbers, records of calls made from city hall extensions and cellular phones, and records of reimbursements made by various department heads for the time period of December, 1994 through February, 1995. You have provided a representative sample of the information at issue. You claim that portions of the information should be withheld pursuant to sections 552.101 and 552.117 of the Government Code. You make no claim that city hall telephone numbers are excepted from disclosure. Therefore, we assume that you have released this information.

You assert that section 552.117 excepts from disclosure the personal pager, mobile, cellular, and home telephone numbers of employees who, pursuant to section 552.024 of the Government Code, have requested that their home address and telephone number be withheld. At the time the city received the request, section 552.117 of the Government Code<sup>1</sup> excepted from public disclosure:

---

<sup>1</sup>The Seventy-fourth Legislature amended section 552.117 of the Government Code. Act of May 29, 1995, 74th Leg. R.S., ch. 1035, 1995 Sess. Law Serv. 5127 (Vernon). However, this amendment does not effect the request at issue here. A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.* §26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon).

(1) The home address or *home telephone number* of:

(A) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code. [Emphasis added.]

In pertinent part, section 552.117 excepts from disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024 of the Government Code.

A portion of the records at issue reveals the employees' home telephone numbers. Section 552.117 requires you to withhold any home address or telephone number of an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.<sup>2</sup>

Also at issue are the numbers for cellular and mobile phones, and for pagers. You inform us that these phones and pagers were purchased, installed, and billed at employee expense. In Open Records Decision No. 506 (1988), this office opined that the statutory predecessor to section 552.117 authorized the withholding of mobile or cellular phone numbers relating to equipment paid for solely by the employee when the employee had requested that the numbers be maintained as confidential. We see no difference between a pager number paid for by an employee, and a cellular phone number paid for by an employee. Therefore, you must withhold the numbers for the pagers and for the mobile or cellular phones that were paid for by the employee, if the employee has so requested in accordance with section 552.024.<sup>3</sup>

---

<sup>2</sup>We note that you redacted the home address and telephone number from an employee's personal check which was provided as reimbursement to the city for personal long distance calls. The city may withhold this redacted information if the employee has notified the city in accordance with section 552.024.

<sup>3</sup>As we have already stated, you may not, however, withhold the information concerning an official or employee who made the request for confidentiality under section 552.024 after this request for

You assert that records of calls made by employees on cellular phones that are paid for by the employee, and telephone numbers of personal calls placed on a city phone are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy in conjunction with section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). The telephone numbers called, by themselves, are not highly intimate and embarrassing information. However, if the city provides information that would require us to conclude that a particular number is intimate and embarrassing to the employee who called the number, such as the number of an employee's psychiatrist, common-law privacy would protect such number from required public disclosure. The mere fact that the calls are personal and the mere desire of an employee that the city protect from disclosure the telephone numbers of personal calls made by that employee does not establish that such numbers are intimate or embarrassing information. Nor does the fact that an employee pays for a cellular phone or reimburses the city for calls made on a city phone establish that the numbers are intimate or embarrassing information.

Constitutional privacy protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," that is, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 (1987) at 4. It protects against "invasions of privacy

---

(Footnote continued)

the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

Constitutional privacy protects the numbers from required public disclosure only if the city provides information that a particular number pertains to a "zone of privacy" or to the "most intimate aspects of human affairs." Absent such information, we cannot conclude that any of the numbers are protected from required public disclosure based on constitutional privacy.<sup>4</sup>

Although the attorney general will not ordinarily raise an exception for a governmental body, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.101 of the Government Code, because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov't Code § 552.352. The records submitted for our review include a copy of an employee's personal check. Though the city redacted the employee's home address and telephone number, the individual's personal bank account number was not redacted. We believe that a personal bank account number constitutes highly intimate or embarrassing facts about an individual. *See* Open Records Decision No. 545 (1990). Moreover, disclosure of a person's bank account number is of no legitimate concern to the public. The public interest in the matter at hand resides in knowing that personal long distance calls made by an employee were reimbursed to the public employer, not in release of the personal account number. Therefore, you should withhold this information.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

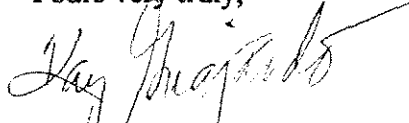
---

<sup>4</sup>We note that you have cited a previous decision of this office, Open Records Letter No. 94-730 (1994), as precedent for the withholding of personal telephone numbers called by an employee as an invasion of the individual's constitutional right to privacy. That decision permitted the City of Galveston to withhold the personal telephone numbers of calls made by a city employee on his personal phone, since such numbers "are of no legitimate public concern." However, we believe Open Records Letter No. 94-730 (1994) erroneously failed to consider whether the numbers at issue are "highly intimate or embarrassing facts." As stated in this decision, we cannot conclude that a particular phone number called by a city employee is highly intimate or embarrassing information about that employee, unless the governmental body provides additional information to explain that it is so.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

KHG/LMM/ch

Ref.: ID# 32313

Enclosures: Submitted documents

cc: Ms. Julie Mason  
Mr. R.A. 'Jake' Dyer  
Houston Chronicle  
P.O. Box 4260  
Houston, Texas 77210  
(w/o enclosures)